

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1661

Introduced by Assembly Member Nielsen

January 19, 2010

An act to amend Section ~~459~~ of the Penal Code, relating to burglary
602.5 of the Penal Code, relating to trespass.

LEGISLATIVE COUNSEL'S DIGEST

AB 1661, as amended, Nielsen. ~~Burglary-Trespass: resisting a public officer.~~

Existing law establishes the offense of residential trespass, which is punishable as a misdemeanor with specified penalties. Existing law also makes it a misdemeanor with specified penalties for anyone to willfully resist, delay, or obstruct any public officer, peace officer, or an emergency medical technician, in the discharge or attempt to discharge any duty of his or her office or employment, as specified.

This bill would make it an offense to commit a residential trespass in an effort to evade or flee from a public officer, peace officer, or an emergency medical technician, in the discharge or attempt to discharge any duty of his or her office or employment. The bill would provide that this offense would be punishable by imprisonment in a county jail not exceeding one year, or in state prison for 16 months, 2, or 3 years.

~~Existing law establishes the offense of burglary, which consists of entering specified buildings, places, or vehicles with the intent to commit grand or petit larceny, or any felony.~~

~~This bill would expand the scope of that offense to include entry into an inhabited dwelling of another with the intent to willfully resist, delay, or obstruct any public officer or peace officer in the discharge or attempted discharge of any duty of his or her office or employment.~~

~~By expanding the scope of an existing~~ *creating a new* offense, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 602.5 of the Penal Code is amended to
2 read:

3 602.5. (a) ~~Every~~ *Except as provided in subdivision (e), every*
4 person other than a public officer or employee acting within the
5 course and scope of his or her employment in performance of a
6 duty imposed by law, who enters or remains in any noncommercial
7 dwelling house, apartment, or other residential place without
8 consent of the owner, his or her agent, or the person in lawful
9 possession thereof, is guilty of a misdemeanor.

10 (b) ~~Every~~ *Except as provided in subdivision (e), every* person
11 other than a public officer or an employee acting within the course
12 and scope of his employment in performance of a duty imposed
13 by law, who, without the consent of the owner, his or her agent,
14 or the person in lawful possession thereof, enters or remains in
15 any noncommercial dwelling house, apartment, or other residential
16 place while a resident, or another person authorized to be in the
17 dwelling, is present at any time during the course of the incident
18 is guilty of aggravated trespass punishable by imprisonment in a
19 county jail for not more than one year or by a fine of not more than
20 one thousand dollars (\$1,000), or by both that fine and
21 imprisonment.

22 (c) If the court grants probation, it may order a person convicted
23 of a misdemeanor under subdivision (b) to up to three years of

1 supervised probation. It shall be a condition of probation that the
2 person participate in counseling, as designated by the court.

3 (d) If a person is convicted of a misdemeanor under subdivision
4 (b), the sentencing court shall also consider issuing an order
5 restraining the defendant from any contact with the victim, that
6 may be valid for up to three years, as determined by the court. In
7 determining the length of the restraining order, the court shall
8 consider, among other factors, the seriousness of the facts before
9 the court, the probability of future violations, and the safety of the
10 victim and his or her immediate family.

11 (e) *Every violation of this section by a person who trespasses*
12 *in an effort to evade or flee from an officer or emergency medical*
13 *technician in violation of paragraph (1) of subdivision (a) of*
14 *Section 148 shall be punished by imprisonment in a county jail*
15 *not exceeding one year, or in state prison for 16 months or two or*
16 *three years.*

17 (e)

18 (f) Nothing in this section shall preclude prosecution under
19 Section 459 or any other provision of law.

20 ~~SECTION 1. Section 459 of the Penal Code is amended to~~
21 ~~read:~~

22 ~~459. Every person who enters any house, room, apartment,~~
23 ~~tenement, shop, warehouse, store, mill, barn, stable, outhouse or~~
24 ~~other building, tent, vessel, as defined in Section 21 of the Harbors~~
25 ~~and Navigation Code, floating home, as defined in subdivision (d)~~
26 ~~of Section 18075.55 of the Health and Safety Code, railroad car,~~
27 ~~locked or sealed cargo container, whether or not mounted on a~~
28 ~~vehicle, trailer coach, as defined in Section 635 of the Vehicle~~
29 ~~Code, any house car, as defined in Section 362 of the Vehicle~~
30 ~~Code, inhabited camper, as defined in Section 243 of the Vehicle~~
31 ~~Code, vehicle as defined by the Vehicle Code, when the doors are~~
32 ~~locked, aircraft as defined by Section 21012 of the Public Utilities~~
33 ~~Code, or mine or any underground portion thereof, with intent to~~
34 ~~commit grand or petit larceny or any felony, or enters an inhabited~~
35 ~~dwelling of another to willfully resist, delay, or obstruct any public~~
36 ~~officer or peace officer in the discharge or attempted discharge of~~
37 ~~any duty of his or her office or employment, is guilty of burglary.~~
38 ~~As used in this chapter, "inhabited" means currently being used~~
39 ~~for dwelling purposes, whether occupied or not. A house, trailer,~~
40 ~~vessel designed for habitation, or portion of a building is currently~~

1 ~~being used for dwelling purposes if, at the time of the burglary, it~~
2 ~~was not occupied solely because a natural or other disaster caused~~
3 ~~the occupants to leave the premises.~~

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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15 CORRECTIONS: _____

16 Text—Page 4.
17 _____